

Legislative Dysfunction and the Failure of Inactive Voter List Reform

In May 2014, the Massachusetts legislature passed and Governor Patrick signed a package of election law reforms known as Chapter 111.¹ Major reforms contained in the package included online voter registration, early voting, and random audits following presidential elections.

Another important element of Chapter 111 was inactive voter list reform. This reform was highlighted by Representative James M. Murphy, House Chair of the Joint Committee on Election Laws, in the one-page bill summary he distributed to all state representatives shortly before the House voted on the package on May 14, 2014:

“Inactive Voter List Reform: A voter will now be placed on the inactive voter list if they fail to return the annual census for two years instead of one. This will lessen confusion at the polls and make procedures across the state uniform.”²

The annual census, sometimes called the street listing, is sent each January to residents of every city and town in Massachusetts, asking them to confirm their residence and provide other information such as age, occupation, veteran status, and nationality.³

Pam Wilmot, Executive Director of Common Cause Massachusetts, explained the significance of the inactive voter list and the rationale for its reform in her testimony before the Joint Committee on Election Laws in 2013:

“[A]ccording to current law, if a resident does not return the census form in any year, he or she becomes an inactive voter and must fill out paperwork (affidavit of continuous residency and a registration form) and show identification at the polls regardless of how frequently they vote. If the voter did not bring identification, he or she must cast a challenged ballot, which involves more paperwork. According to the law, even if a person votes in every election, he or she could become an inactive voter by merely not returning a census post card. This is crazy. It also was one of the most significant reasons behind long lines at many urban polling places [in November 2012] because of the amount of paperwork required and the number of voters who are on the [inactive voter] list in some communities.”⁴

One community where the issue of inactive voters was getting a lot of attention at the time was Worcester. Wait times at the polls of up to 75 minutes at the November 2012 election were attributed in part to Worcester having more than 30 percent of its registered voters on the

¹ <https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter111>

² “Election Laws Conference Committee Report Highlights,” May 14, 2014 (on file with the author)

³ MGL ch. 51, s. 4

⁴ Pam Wilmot, Executive Director, Common Cause Massachusetts, “Testimony in Support of S.327 Election Laws Reform Act of 2013,” April 3, 2013 (on file with the author)

inactive list.⁵ Inactive status was found to be particularly common among low-income and non-English speaking voters for whom housing instability and language challenges made it less likely they would receive, complete, and return the annual census and any follow-up notices.⁶

Fast forward nearly 10 years to the present. *Notwithstanding Chapter 111, Massachusetts voters are still being placed on the inactive voter list for failing to return the annual census once.* The Massachusetts Secretary of State's current website confirms this:

“Every year, each city and town gathers resident information for an Annual Street List. This is also known as a city or town census. . . . If you don't respond to the Annual Street List, you will be placed on the inactive voters list.”⁷

The failure of inactive voter list reform is a good example of legislative dysfunction in Massachusetts. As Representative Murphy's bill summary and a review of the legislative history show, the Legislature in 2014 clearly intended to change the trigger for placement on the inactive voter list from failure to respond to the annual census once to failure to respond for two consecutive years. However, due to poor legislative drafting and lack of attention to the broader statutory framework in which the reforms were to operate, the Legislature failed to achieve its intent. As a result, its policy objectives – reducing delays and confusion at the polls – have been unrealized. To compound matters, the Legislature has not taken action for a decade to fix the flaws in Chapter 111. Over that period, those flaws have exacerbated the confusion among voters and election officials, while new problems have emerged that are making inactive voter status an even bigger barrier to voter participation.

The Legislative History of Chapter 111

On September 16, 2013, the Joint Committee on Election Laws reported out an elections reform bill providing for online registration, early voting in presidential elections, and two task forces, one to study the state's first experience with early voting in 2016 and the other to study post-election audits.⁸ Much of the language of this bill was drawn from legislation filed at the beginning of 2013 by the committee's Senate Chair Barry Finegold.⁹ However, it did not include

⁵ Nick Kotsopoulos, “Worcester councilors hope to reduce wait times at polling places,” *Worcester Telegraph & Gazette*, Dec. 3, 2012

(<https://www.telegram.com/story/news/state/2012/12/03/worcester-councilors-hope-to-reduce/49242310007/>)

⁶ “Inactive voter list a concern,” *Worcester Magazine*, Aug. 18, 2011

(<https://www.worcestermag.com/story/news/2011/08/18/inactive-voter-list-a-concern-127948508/10924921007/>). Census forms are sent to households and cover all persons who reside at a common address. If a household fails to return the census, follow-up notices are sent to each voter registered at that address. While it's possible that a notice specifically about voter status may get more attention than a census, the same factors that militate against receiving and returning the latter are also likely to affect the former.

⁷ <https://www.sec.state.ma.us/divisions/elections/voting-information/inactive-voters.htm> (accessed November 8, 2023)

⁸ House No. 3647 (2013)

⁹ Senate No. 327 (2013)

two sections from Senator Finegold's bill relating to inactive voters.¹⁰ Its only mention of the issue was in a section requiring the Secretary of State to create an online portal where members of the public can confirm their voter registration status, including whether it is active or inactive.¹¹

The Joint Committee bill was referred to the House Committee on Ways & Means, which reported it out largely unchanged on November 20, 2013.¹² When the full House took up the bill that same day, it adopted an amendment modifying the section on the new online portal to require that voters who find their registration status is inactive be provided with information about how to restore it to active status.¹³ The bill as passed by the House did not alter any other laws on inactive voters.

In contrast, the Senate Ways & Means Committee version of the bill, released in January 2014, sought to make major changes on inactive voters. It eliminated altogether the link between the annual census and voter registration status. In its place, it provided that the trigger for placement on the inactive voter list would be failure to vote in two general elections for federal office.¹⁴

When the full Senate took up the bill on January 16, it considered two amendments restoring the link between the annual census and voter registration status.¹⁵ Both were rejected, and the bill as passed by the Senate included the inactive voter reforms put forward by Senate Ways & Means.

The Senate bill was more ambitious than the House version in other respects as well. It broadened the scope of early voting to include all state elections, not just presidential elections, and added election day registration, pre-registration of 16 and 17 year-olds, and post-election audits. On January 27, a House-Senate conference committee was formed to reconcile the differences.

The bill the conference committee reported out three and a half months later, on May 12, reflected a compromise between the narrower House version and more ambitious Senate version. From the House bill, it included on-line registration and the on-line portal to check registration status. From the Senate bill, it included broader use of early voting, pre-registration, and post-election audits.

The conference committee also reached a compromise on inactive voters. It did not adopt the Senate's approach of eliminating the link between the annual census and voter registration status. But it agreed to change the trigger for placing a voter on the inactive list from failure to

¹⁰ Senate No. 327 (2013), s. 1, 4

¹¹ House No. 3647 (2013), s. 4

¹² House No. 3772 (2013)

¹³ Amendment 2, <https://malegislature.gov/Bills/188/H3772/Amendments/House>

¹⁴ S.1975 (2014), s. 4.

¹⁵ Amendments 15 and 16, <https://malegislature.gov/Bills/188/S1975/BillHistory>

return the census once to failure to return it twice. It sought to make this change by adding the phrase “for two consecutive years” to two sections of the state’s election laws. First, it inserted the phrase into Section 37A of Chapter 51, which specifies which voters’ names must be maintained on the inactive list.¹⁶ Second, in Section 4c of Chapter 51, it changed the wording of the required notice on the census materials that municipalities mail out to their residents. Previously, the section mandated that the census form and the envelope in which it is mailed must display the following statement in boldface type: “Warning – failure to respond to this mailing shall result in removal from the active voting list.” The conference committee added “for two consecutive years” between “mailing” and “shall.”¹⁷

However, the conference committee did not conform other related sections of the law with the two sections it changed. Most important, it neglected to clarify the status of voters who fail to return the census just once. In amending Section 37A of Chapter 51, the Legislature directed that these voters should no longer be placed on the inactive voter list. But in the absence of changes to the adjacent Section 37, these voters do not qualify as active voters either. Under Section 37, only voters who return the current year’s census are entered on the active voter list (also known as the annual register).

The odd and certainly unintended consequence of this oversight is to put a greater burden on voters who fail to return the census once than on voters made inactive for failing to return it twice. As noted in Pam Wilmot’s testimony, inactive voters must complete an affidavit and, if they do not present identification confirming their residence, their ballots must be challenged by the precinct warden. This paperwork¹⁸ can create backups at the polls and is aggravating to voters, especially ones who vote in most or all elections. That’s why the Legislature undertook to reform the state’s inactive voter law. But once inactive voters complete the paperwork, their ballots are placed in the ballot box or voting machine, counted like other ballots, and only reexamined if there’s a recount.

If voters failing to return the census once are neither active voters under Section 37 nor inactive voters under Section 37A, they would be required to cast a provisional ballot. That’s because their names would not appear at all on the lists used to check in voters at the polls on election day. Per Section 55 of Chapter 51, which was left untouched by Chapter 111, the election day lists are drawn solely from the active voters list and the inactive voters list. Casting a provisional ballot is more complicated and time-consuming than casting a challenged ballot. In addition to completing an affirmation, a voter casting a provisional ballot must produce identification. If they are not carrying identification, they must return with it before the polls close or their ballot will not be accepted. Unlike challenged ballots, provisional ballots are not counted on election

¹⁶ MGL ch. 51, s. 37A

¹⁷ MGL ch. 51, s. 4c

¹⁸ When a ballot is “challenged,” the following steps are required, in addition to completing the affidavit of current and continuous residency: 1) the voter writes their name and address on the ballot; 2) the precinct warden writes their name on the ballot and the reason for the challenge; and 3) the warden issues the following oath to the voter: “You do solemnly swear (or affirm) that you are the identical person whom you represent yourself to be, that you are registered in this city (or town) and that you have not voted at this election.” 950 CMR 54.04(23).

day. Each provisional ballot is assigned a number, which is entered on a provisional ballot roster together with the voter's name, address, party, and reason for casting a provisional ballot. Once the voter completes the ballot, it is sealed in an envelope and segregated from the other ballots. Election officials have 12 days after a state election (3 days after a primary) to determine if the voter is eligible to vote. Only after they are determined eligible are their ballots counted. In municipalities where large numbers of people fail to return the census, requiring them to cast provisional ballots would significantly increase wait times at the polls and delay election results while the provisional ballots are examined and counted. Frustration and dissatisfaction among voters, candidates, and election administrators would be high.

In addition to increasing the election day confusion and disruption that inactive voter reform was intended to reduce, the failure of the conference committee to put voters who don't return the census once on some type of election day voting list also effectively nullified the change it made to Section 37A. As amended by Chapter 111, Section 37A states that voters shall be maintained on the inactive voters list if they are "not entered in the annual register pursuant to section 37 for two consecutive years."

But the way Section 37 operates makes this impossible. Section 37 determines who is and is not entered in the annual register by comparing the current year's census with the names "borne on the voting list in the last preceding election."¹⁹ If a voter's name is not on the voting list in the preceding year – and per Section 55, a voter who fails to return the census once is not on a voting list – Section 37 doesn't direct registrars to look back to the voting list from two years before and compare it with the current year's census. Consequently, it would be impossible for a voter to be "not entered in the annual register pursuant to section 37 for two consecutive years." This problem could be solved either by amending Section 55 to keep voters on an election day voting list in the first year they fail to return the census or by changing Section 37 to allow for a two-year lookback. The conference committee bill did neither.

Within a few days of its release, the conference committee bill was put to a vote. The gaps and inconsistencies in its inactive voter reforms were not openly identified or discussed. As the report of a conference committee, the bill could only be voted up or down and could not be amended. It passed overwhelmingly in both the House (on May 14) and the Senate (on May 15)²⁰ and was signed into law as Chapter 111 by Governor Patrick on May 22.

Within months, however, it was apparent the reforms were stillborn. This happened without any fanfare and without anyone inside or outside the Legislature explicitly pointing out how Chapter 111 was unworkable. Municipalities simply continued to administer their voting lists as before, placing on inactive status any voter who did not return the 2014 census.²¹ The Secretary

¹⁹ MGL ch. 51, s. 37, sentence 3.

²⁰ 147 to 4 in the House; 38 to 0 in the Senate

²¹ For example, this news item appeared in the *Boston Globe* in mid-July 2014: "Voter confirmation postcards were recently mailed to all registered voters in Tewksbury who had not returned their 2014 town census form or whose household census form noted that they had moved out of town. Residents who receive the mailing were automatically placed on inactive voter status." *Boston Globe*, July 13, 2014, p. Z2.

of State, who oversees the implementation of the state’s election laws, continued to issue guidance to local election officials stating that voters who fail to return the census once are placed on the inactive list.²²

The Causes of the Failure of Chapter 111

How did this happen? What explains how the Legislature could completely fail to achieve its intent to reform the state’s inactive voter laws? How could it be so careless in its drafting and oblivious of the statutory context that its legislation could be null and void from the moment of its passage?

These questions are difficult to answer definitively because there is no public record of the reasoning behind the Legislature’s actions. None of the three legislative committees (Joint Committee on Election Laws, House Ways & Means Committee, Senate Ways & Means Committee) that produced versions of the legislation that ultimately became Chapter 111 issued any reports detailing the testimony they received, the research conducted by their staff, or the factors and deliberations that led to their recommended bills. The conference committee met behind closed doors. This is common practice in the Massachusetts Legislature and is justified on the grounds that holding their deliberations in public would make it difficult for conference committee members to engage in the give-and-take required to reach compromise. However, the conference committee also issued no report at the conclusion of its closed-door discussions explaining how and why it reached its decisions. Representative Murphy’s one-page summary, shared with state representatives on the same day they voted on the conference committee bill, contained no explanation of the recommended outcome on inactive voters beyond the two sentences noted above.

All that can be safely said is the conference committee cribbed directly from two sections of the bill filed by Senator Finegold at the beginning of 2013.²³ With only minor editorial changes, Sections 1 and 4 of Senator Finegold’s bill became Sections 1 and 4 of Chapter 111. As noted earlier, these two sections were not included in the bill initially reported out by the Joint

²² The Secretary’s 2017 handbook for local election officials gave the following description of inactive voters: “Voters may become inactive by failing to respond to the annual street listing, also known as the city or town census. The census form is mailed to every home at the beginning of each year. Voters who fail to respond to it are then mailed a confirmation notice, which is usually a postcard asking if the voter still lives at his or her address. Voters who do not return the confirmation notice will remain on the inactive voter list until they confirm their address in writing with the local election official or until they vote.” William Frances Galvin, *Election Officer’s Handbook (Optical Scan)*, pp. 7-8 (2017).

In addition, the summary of Massachusetts law contained in a 2017 report from the National Association of Secretaries of State stated: “Upon completion of the street listing, the registrars will prepare the ‘annual register’ containing the names of all qualified voters in their city or town as found on the street listing. The annual register is considered the active voting list. A voter who does not respond to the local street listing is not entered into the annual register and is instead maintained on the inactive voter list. All inactive voters are sent a confirmation notice . . . If the voter does not return the notice, the voter’s name will be placed on the inactive list.” *NASS Report: Maintenance of State Voter Registration Lists, A review of relevant policies and procedures* (2017)

²³ S.327 (2013).

Committee on Election Laws. Nor were they in any subsequent version produced by any committee or passed by the House or Senate until the moment they appeared in the conference committee bill. One might speculate that their inclusion in the final bill was pure horse trading. The House sought no changes to the inactive voter law. The Senate proposed a major change, e.g., eliminating the link with the census altogether. The conference committee came out “in the middle,” maintaining the census as the trigger for inactive voter status but loosening the conditions under which it would apply.

However, that does not explain why the conference committee and the legislative leaders that endorsed the recommended compromise failed to recognize it would not work. The simplest hypothesis for the Legislature’s failure is that it lacked the capacity to understand what statutory changes were needed to achieve its intended goals. A fuller public record of the work of the various legislators, committees, and their staff would help prove or disprove this hypothesis. In its absence, one can reasonably conjecture that they had too little expertise of their own and put too much reliance on the expertise of outside advocates. The advocates included voting rights organizations such as Common Cause and MassVote, who endorsed Senator Finegold’s inactive voter reforms and must have believed, albeit incorrectly, that those two statutory changes were sufficient to achieve them. Ultimately, however, it is the Legislature’s responsibility to do enough due diligence to make sure it is adopting laws that will achieve their objectives.

Admittedly, Massachusetts election law is complicated. The sections of the General Laws addressed and not addressed by Chapter 111 are the product of decades, sometimes more than a century, of legislative activity. The annual census was originally conducted by local assessors, not registrars of voters, and used to levy the poll taxes that were a precondition to voting in Massachusetts until the late 19th century. The section on voting lists, currently Section 55 of Chapter 51, was amended more than 25 times over the course of the 19th and early 20th centuries. In recent decades, the state’s election laws have been reshaped to conform with federal requirements under the National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act (2002). The net result of these many years of legal development is a dense web of statutes of varied provenance and terminology interacting in ways that are difficult to decipher, let alone revise in a coherent manner. The Legislature is required to recodify the General Laws regularly to reduce their complexity and ambiguity.²⁴ Instead, it has allowed the

²⁴ MGL Ch. 3, sec. 55A: “The committees on rules of the two branches, acting concurrently, shall appoint a skilled person as recodification counsel The recodification counsel shall, from time to time, submit to the counsel to the senate and to the counsel to the house of representatives, jointly, recommendations, including drafts of legislation, for the correction, revision, amendment, rearrangement, consolidation, compilation and recodification of the General Laws, or any of them, and amendments thereof, including recommendations for the repeal of such statutory provisions as have become obsolete or the reasons for the enactment of which have ceased to exist. In submitting recommendations under this section the recodification counsel may recommend the omission or repeal of redundant enactments and those which may have ceased to have any effect on existing rights, the rejection or elimination of superfluous words, the condensation of circuitous, tautological and ambiguous phraseology and the correction of mistakes, inconsistencies and imperfections. Recommendations for changes of provisions of the General Laws and amendments thereof, as provided for in this section, shall be consistent with the will and intent of the general court as expressed in such provisions at the time of such recommendations.”

state's election laws to grow barnacle-like over the years, outstretching its own capacity to understand them accurately and amend them effectively.

But if the Legislature was confused about how to bring about inactive voter reform, it seems implausible that confusion could have extended to the Secretary of State. The Secretary is the state's chief election officer. The Elections Division in the Secretary's office is intimately familiar with the state's election laws and oversees their implementation. In a memo dated February 17, 2021, the Director of the Elections Division indicated "[we] did express our concerns" when the legislation that would become Chapter 111 was being considered.²⁵

The memo suggests their main concern at the time was that the proposed changes could expose the state to litigation for failure to meet its obligation under the NVRA to make a "reasonable effort" to remove the names of ineligible voters from the voter lists.²⁶ In light of this concern, it's possible the Secretary was both well aware the inactive voter reforms in Chapter 111 would be stillborn and perfectly fine with that. The Secretary's actions after the passage of Chapter 111 – allowing municipalities to continue to administer the census and voting lists as before and issuing guidance affirming that a single failure to return the census leads to inactive voter status – strongly suggest that office never believed the legislation was workable. Whether they made this clear to the Legislature or stood aside and allowed it to enact reforms they opposed, knowing they would be ineffective, is impossible to say based on the available record. It is indisputable that Chapter 111's flaws gave the Secretary room to use his oversight powers to preserve an approach to inactive voters at variance with the Legislature's intent.

What is more puzzling is that once it became apparent that its inactive voter reforms had failed, the Legislature did nothing to fix them. It was not until 2019 that any bills were filed to further amend the state's election laws to achieve the intent of Chapter 111.²⁷ None of them have ever emerged from committee. Bills were filed in the Senate in 2015, 2017, and 2019 to decouple the inactive voter list from the census, likewise with no success.²⁸ Decoupling is now part of a pending election reform bill backed by many of the same organizations, including Common Cause and MassVote, that were active in support of Chapter 111.²⁹ After also waiting five years until 2019, the Secretary of State began to seek legislation repealing sections 1 and 4 of Chapter 111 and returning the law to the status quo ante.³⁰ These bills too have not progressed beyond the committee stage.

Meanwhile, the problems that prompted the Legislature's 2014 attempt at inactive voter reform remain unaddressed. There were more than 700,000 names on inactive voter lists in

²⁵ "Re: An Act Relative to the Annual Street Listing" (memorandum from Michelle K. Tassinari to William Frances Galvin), Feb. 17, 2001, p.2 (on file with the author)

²⁶ 52 USC Sec. 20507(a)(4).

²⁷ H.3831 (2019), H.806 (2021), H.702 (2023).

²⁸ S.373 (2015), S.368 (2017), S.862 (2019).

²⁹ SD.1458 (2023). Decoupling has also been filed as a standalone bill. H.707 (2023)

³⁰ H.713 (2019), S.452 (2021), S.408 (2023). This is more evidence of the Secretary's policy preferences.

Massachusetts in 2022, an increase of 34% compared to 2014.³¹ The testimony of East Boston residents at a recent legislative hearing echoes the reports from Worcester ten years before – inactive voter status is particularly common in urban communities with large numbers of housing insecure and non-English speaking voters.³² News reports on the 2021 municipal elections in the majority Latino city of Holyoke similarly highlighted the “more than normal” number of voters who showed up at the polls only to discover that they were listed as inactive.³³ However, these problems also continue to frustrate voters and complicate elections in small rural towns and metro Boston suburbs.³⁴

In fact, the flawed reforms in Chapter 111 have made the confusion and lack of uniform procedures around inactive voters even worse. While all municipalities apparently follow the Secretary of State’s guidance to inactivate voters who fail to return the census once, they display different warning notices on their census forms and envelopes. Some follow Section 1 of Chapter 111, stating “Warning – failure to respond to this mailing for two consecutive years shall result in removal from the active voting list.”³⁵ But the majority, including large cities such as Springfield and Lawrence, still use the pre-2014 warning that omits the words “for two consecutive years.”³⁶ Some municipalities have the new warning on the envelope but the pre-2014 language on the census form itself.

The Secretary’s own information for local election administrators is not free of such contradictions. The official guidance on preparing the census, annual register, and voting lists indicates that census materials sent by mail must state in large, bold face print: “Warning – failure to respond to this mailing for 2 consecutive years shall result in removal from the active voting list.” But two pages later, it directs registrars to send a confirmation notice “each year” to all voters whose names are not on the current year’s annual register informing them they have been designated as inactive.³⁷

³¹ US Election Assistance Commission, *2022 Election Administration and Voting Survey Report*, p. 174 (data for 2022); *2016 Election Administration and Voting Survey Report*, p. 59 (data for 2014)

³² Testimony of Adilene Lorenzo: “In my community, I’ve spoken to a lot of families who are housing insecure or who are in transition, these are families who have recently lost their homes or have moved. The lack of housing should not be coupled with the inability to vote . . . So I really urge . . . the decoupling of the municipal census with voter registration.” NUBE Testimonies for ACCESS Act, September 2023 (on file with the author)

³³ “Sullivan takes 4 wards, Garcia 3 in mayoral vote,” *Daily Hampshire Gazette* (Sept. 23, 2021), p.A1, A5.

³⁴ “Buried in useless, unreliable, and unavailing data,” *Athol Daily News* (Sept. 25, 2022), p.A8 (op-ed by members of Charlemont Selectboard); “Letter: State Statute Causing Confusion about Voter Status,” *Watertown News* (Sept. 15, 2023),

<https://www.watertownmanews.com/2023/09/15/letter-state-statute-causing-confusion-about-voting-status/>

³⁵ Waltham, Cambridge, Weston, North Reading

³⁶ Springfield, Lawrence, Belmont, Watertown, Tewksbury, Westfield. Others fudge. Newton’s 2023 census forms states “failure to respond could result in removal from active voter list,” but its website says those who don’t respond each year will become inactive (<https://www.newtonma.gov/government/elections/register-to-vote>). Boston’s 2023 census form doesn’t contain any warning, but the city’s website says “by not responding a person’s voting status will be made inactive”

(<https://www.boston.gov/departments/elections/how-add-your-name-annual-census>).

³⁷ William Frances Galvin, *Local Lists*, p. 2, 4 (2017).

In 2014, the main negative consequences associated with long inactive voter lists were confusion, extra paperwork, delays at the polls, and voter frustration. These are still widespread and, if they reach a serious level, can be disincentives to vote. Now there is reason for concern that some on the state's inactive voter lists may be encountering another, more direct barrier to voting.

Regulations issued by the Secretary of State are very clear that inactive voters must be allowed to vote regardless of whether they present identification:

“If the name, address, or party enrollment of a person claiming the right to vote appears on the voting list as an inactive voter, the presiding officer shall allow such inactive voter to vote upon written affirmation by the inactive voter of his current and continuous residence in the municipality, (or, at a state primary or state election, residence continued in the municipality within the previous six months,) signed under the penalties of perjury. . . . All inactive voters shall be asked to show suitable identification showing their name and current address. Inactive voters who fail to show suitable identification must be allowed to vote.”³⁸

However, judging from the statements on their websites, many local election officials appear to be going beyond asking inactive voters to show identification to requiring them to show identification.³⁹ The City Clerk in Holyoke was quoted in 2021 as stating “those listed as inactive have to, per state law, show some means of identification.”⁴⁰ It is indicative of how widespread this misconception is that even the League of Women Voters of Massachusetts, one of the state's leading voter advocacy organizations, has the following information on its website: “You have the right to vote but must also show identification if your name is on the inactive voter list.”⁴¹

The practice of local election officials to require identification – or at least to message such a requirement on their websites – may be well-intentioned. As noted earlier, if inactive voters do not present identification confirming their residence, their ballots must be challenged by the precinct warden. The more inactive voters who bring identification to the polls, the fewer the number of challenged ballots, with their associated paperwork and delay. If, however, election officials actually insist that inactive voters produce identification as a condition of voting, it is likely some number of them will be turned away from the polls in circumstances where the law clearly provides they have the right to vote. Given the makeup of inactive voters lists, the impact of an ID requirement can be expected to fall disproportionately on people who already face economic, housing, and language barriers to civic participation.

³⁸ 950 CMR 54.04(6)(a), 54.04(6)(b).

³⁹ Lincoln: “will have to show ID” (<https://www.lincolntown.org/612/Inactive-Voters>); Newton: “a valid ID is required” (<https://www.newtonma.gov/government/elections/register-to-vote>); Westfield: “will be required to show identification” (<https://www.cityofwestfield.org/744/Census-Voter-Activity>)

⁴⁰ Holyoke Daily Hampshire Gazette, 23Sept2021 p.A1, A5.

⁴¹ League of Women Voters of Massachusetts: <https://lwvma.org/voting-and-election-information/on-election-day/>

This is the latest troubling development in the unhappy saga of inactive voter list reform in Massachusetts. In 2014, dysfunction prevented the Legislature from successfully crafting legislation to “lessen confusion at the polls and make procedures across the state uniform.” Nearly 10 years later, with the problems as bad or if not worse, we are still awaiting an effective legislative response.

The inactive voter provisions of Chapter 111 are an instructive example of what can go wrong when the Legislature lacks the capacity to analyze existing laws and draft legislative language that achieves its intent and avoids creating new conflicts and confusion. These failures should prompt serious attention to steps the Legislature can take, such as creating a professional, nonpartisan legislative research and drafting office, to better equip itself to perform its essential functions. Going forward, as it considers new reforms to the state’s inactive voter laws, including possibly decoupling from the annual census, the Legislature would also benefit from the capacity of such an office to conduct in-depth data collection and research on Massachusetts practice as well as comparative research on other states. In its absence, the Legislature will continue to rely on information from advocates and other branches of government that may themselves lack a clear understanding of the law or may have different policy objectives. Additionally, such an office could help address two other needs illuminated by the Chapter 111 debacle – documenting legislative history and recodifying areas of Massachusetts law that have grown complex and ambiguous to the point of incomprehensibility.